

In the Matter of Michele Williams-Kline, County of Essex
DOP Docket No. 2004-1221
(Merit System Board, decided January 25, 2006)

The appeal of Michele Williams-Kline, a former Family Service Supervisor with the County of Essex, concerning her release at the end of her working test period, effective September 22, 2003, was heard by Administrative Law Judge Mumtaz Bari-Brown (ALJ), who rendered her initial decision on December 16, 2005. Exceptions were filed on behalf of the appellant.

Having considered the record and the ALJ's attached initial decision, and having made an independent evaluation of the record, the Merit System Board (Board), at its meeting on January 25, 2006, did not adopt the recommendation of the ALJ to uphold the appellant's release at the end of her working test period. Rather, the Board ordered that the appellant receive a new three-month working test period.

DISCUSSION

The appellant received a regular appointment¹ to the title of Family Service Supervisor, County of Essex, on June 16, 2003 and was required to complete a three-month working test period in order to obtain permanent status. *See N.J.S.A. 11A:4-15a and N.J.A.C. 4A:4-5.2(b)1*. The appellant's performance was evaluated on July 18, 2003, August 18, 2003 and September 16, 2003 and out of a total of five points, she received 4.17, 4.33 and 3.83 on her evaluations, respectively. Five points represented an "Excellent" rating, four points was "Very Good," and one point was "Unsatisfactory." The appellant received a lower score on September 16, 2003 primarily due to receiving a "1" in the category of "Personal Relations." The appellant received a final rating of 12.33 and an "Unsatisfactory" on her "Three Month Evaluation for Probationary Employees." The evaluation indicated that although the appellant had completed her responsibilities, she was involved in an incident where she behaved in a "grossly inappropriate, unprofessional manner unbecoming an employee in the public service." The incident occurred on August 28, 2003. The appellant was then returned to her formerly held permanent title of Family Service Worker. Upon the appellant's appeal of her release at the end of her working test period, the matter was transmitted to the Office of Administrative Law for a hearing as a contested case.

In her initial decision, the ALJ sets forth that for liability purposes, the appointing authority had a policy that all employees must exit the building by 4:30 p.m. On several occasions, the appellant left later than the prescribed time. On August 28, 2003 at approximately 2:30 p.m., the appellant exited the elevator and

¹ The appellant did not receive a provisional appointment as indicated by the ALJ.

Christopher Joseph, a security officer, remarked to the appellant that she was leaving early. (According to the appellant, he made this remark after clapping his hands, as in mock applause.) In response, Joseph testified that the appellant began “yelling and blew off.” Another security officer, Aaron Smiley, warned the appellant that he would arrest her if she continued to stay late in the building. Yvonne Davis, Deputy Director of the Division of Welfare, who was standing outside of the building, witnessed the incident. Although she could not hear the appellant’s precise words, Davis observed the appellant screaming at Smiley and described her behavior as “snarling like an attack dog” and “disturbing.” The appointing authority indicated that the appellant’s actions constituted conduct unbecoming a public employee and insubordination. Thus, it determined that the appellant did not complete her working test period satisfactorily.

The ALJ indicated that the appointing authority provided a reasonable explanation for the policy which required employees to vacate the building at a certain time. Moreover, she stated that although the performance evaluations and overall demeanor of the appellant demonstrated that she would be “an asset to the agency” and may have been provoked to anger by the behavior of the security officers, the appellant nevertheless exhibited rage and fury in public. The ALJ agreed with the appointing authority that the appellant’s behavior constituted unbecoming conduct and was sufficient to cast doubt on her image as a supervisor. Moreover, the ALJ noted that no evidence was presented showing that the appellant’s supervisors had any motive or reason to keep her from attaining permanent status in the position. Therefore, the ALJ concluded that the appellant had failed to establish that the appointing authority acted in bad faith and recommended that the release at the end of the working test period be upheld.

Upon its *de novo* review of the record, the Board disagrees with the ALJ’s determination and finds that the appellant should be reinstated as a Family Service Supervisor and provided a new three-month working test period. Although the appointing authority determined that the appellant’s actions constituted unbecoming conduct and insubordination, no discipline was imposed on her. It is also questionable whether her conduct would have warranted significant discipline given the situation. Furthermore, although the appellant may have exhibited inappropriate conduct, the connection to her work performance is tenuous at best. The incident itself was a result of her long hours on the job. It is clear that the appellant performed well in her duties. Her overall ratings prior to the incident ranged from “Very Good” to “Excellent.” Therefore, under these circumstances, the Board finds that the appellant should be afforded a new working test period to correct her prior deficiency and demonstrate her ability to exhibit behavior suitable for a supervisor.

Additionally, the Board notes that although the appellant will be reinstated to her position as a Family Service Supervisor, she is not entitled to back pay or

counsel fees. In non-disciplinary appeals, such as an appeal of a release at the end of the working test period, the standard for determining whether an appellant is entitled to back pay or counsel fees is governed by *N.J.A.C. 4A:2-4.3(c)* and *N.J.A.C. 4A:2-1.5(b)*. *N.J.A.C. 4A:2-1.5(b)* provides, in pertinent part, that back pay and counsel fees for appeals that are not based on disciplinary action or the challenge of the good faith of a layoff “may be granted . . . where the Board finds sufficient cause based on the particular case.” In this case, the Board has not found that the appellant is entitled to a permanent appointment based on the successful completion of her working test period. Rather, she is simply entitled to a new three-month working test period. Therefore, sufficient cause has not been demonstrated in this matter to award back pay and counsel fees. *See e.g., In the Matter of Rocky Rembert* (MSB, decided December 3, 2003). *Compare, In the Matter of Randy Geis* (MSB, decided November 20, 2002) (Board awarded permanent status, back pay, benefits and seniority where the appellant was not released for specific work-related deficiencies and the record established that he had otherwise satisfactorily completed his working test period) and *In the Matter of Tracy Bowers* (MSB, decided November 10, 1992) (The appellant was entitled to permanent status and back pay where the record established that the appellant had satisfactorily completed his working test period and the appointing authority nonetheless improperly released him from employment).

ORDER

The Merit System Board finds that the appointing authority’s action in releasing Michele Williams-Kline at the end of her working test period was not justified. Therefore, the Board reverses the release and upholds the appeal of the appellant. Further, the Board orders that the appellant be reinstated to the position of Family Service Supervisor and be afforded a new three-month working test period. Moreover, the Board orders that back pay and counsel fees be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.